



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Johann Van Beest, D.C.

**Respondent Name**

ACE American Insurance Company

**MFDR Tracking Number**

M4-17-3355-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

July 18, 2017

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "THE CURRENT RULES ALLOW REIMBURSEMENT"

**Amount in Dispute:** \$1,650.00

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** Submitted documentation does not include a position statement from the respondent. Accordingly, this decision is based on the information available at the time of review.

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 19, 2016	Designated Doctor Examination	\$1,650.00	\$1,650.00

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.235 sets out the fee guidelines for return to work and evaluation of medical care examinations performed on or after September 1, 2016.
3. 28 Texas Administrative Code §134.240 sets out the guidelines for billing designated doctor examinations.
4. 28 Texas Administrative Code §134.250 sets out the fee guidelines for examinations to determine maximum medical and impairment rating performed on or after September 1, 2016.
5. Submitted documentation does not include explanations of benefits.

## Issues

1. Did ACE American Insurance Company (ACE American) respond to the medical fee dispute?
2. Did ACE American take final action to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after receiving the medical bill?
3. Is Johann Van Beest, D.C. entitled to reimbursement for the disputed services?

## Findings

1. The Austin carrier representative for ACE American is Downs-Stanford, P.C. Downs-Stanford, P.C. acknowledged receipt of the copy of this medical fee dispute on July 26, 2017.

28 Texas Administrative Code §133.307 states, in relevant part:

- (d) Responses. Responses to a request for MFDR shall be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.
  - (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

Review of the documentation finds that no response has been received on behalf of ACE American from Downs-Stanford, P.C. to date. The division concludes that ACE American failed to respond within the timeframe required by §133.307(d)(1). For that reason the division will base its decision on the information available.

2. Submitted documentation finds no explanations of benefits were submitted by either party.

According to Texas Labor Code Sec. 408.027(b), ACE American was required to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the pharmacy bill from Dr. Van Beest. Corresponding 28 Texas Administrative Code §133.240(a) also required ACE American to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45<sup>th</sup> day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

- (6) Final action on a medical bill—
  - (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
  - (B) denying a charge on the medical bill.

Dr. Van Beest submitted a copy of a CMS 1500 indicating that the medical bill for the services in dispute were submitted by fax on or about November 21, 2016, and December 22, 2016. The confirmation pages submitted by Dr. Van Beest indicate that the medical bills were submitted to the fax number for the billing agent per the Request for Designated Examination completed by the insurance adjuster. 28 Texas Administrative Code §102.4(p) states:

For purposes of determining the date of receipt for non-commission written communications, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed via United States Postal Service regular mail; or the date faxed or electronically transmitted.

ACE American was, therefore, not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the medical bill from Dr. Van Beest, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45<sup>th</sup> day** [emphasis added] after the insurance carrier received a complete medical bill...

- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:

- (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers' compensation insurance carriers are expected to fulfill their duty to take final action as required by the division's statutes and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that ACE American took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that ACE American timely presented **any** defenses to Dr. Van Beest on an explanation of benefits as required under 28 Texas Administrative Code §133.240 prior to the request for medical fee dispute resolution.

Absent any evidence that ACE American raised any defenses that conform to the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division finds that the services in question will be reviewed in accordance with applicable fee guidelines.

3. Per 28 Texas Administrative Code §134.250(3), "The following applies for billing and reimbursement of an MMI evaluation... (C) An examining doctor, other than the treating doctor, shall bill using CPT Code 99456. Reimbursement shall be \$350." The submitted documentation supports that Dr. Van Beest performed an evaluation of maximum medical improvement. Therefore, the maximum allowable reimbursement (MAR) for this examination is \$350.00.

28 Texas Administrative Code §134.250(4) states, in relevant part:

- (C) For musculoskeletal body areas, the examining doctor may bill for a maximum of three body areas.
- (i) Musculoskeletal body areas are defined as follows:
- (I) spine and pelvis;
  - (II) upper extremities and hands; and,
  - (III) lower extremities (including feet).
- (ii) The MAR for musculoskeletal body areas shall be as follows.
- (I) \$150 for each body area if the Diagnosis Related Estimates (DRE) method found in the AMA Guides 4th edition is used.
  - (II) If full physical evaluation, with range of motion, is performed:
    - (-a-) \$300 for the first musculoskeletal body area; and
    - (-b-) \$150 for each additional musculoskeletal body area.
- (D) ...
- (i) Non-musculoskeletal body areas are defined as follows:
- (I) body systems;
  - (II) body structures (including skin); and,
  - (III) mental and behavioral disorders.
- (ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides...
- (v) The MAR for the assignment of an IR in a non-musculoskeletal body area shall be \$150.

Review of the submitted documentation finds that Dr. Van Beest performed impairment rating evaluations of the lumbar spine, ribs, and traumatic brain injury. The submitted medical bill indicates that Dr. Van Beest is seeking reimbursement for two body areas. Therefore, the MAR for this examination is \$450.00.

28 Texas Administrative Code §134.204 (j)(4)(B) states, in relevant part:

When multiple IRs are required as a component of a designated doctor examination ... the designated doctor shall bill for the number of body areas rated and be reimbursed \$50 for each additional IR calculation. Modifier 'MI' shall be added to the MMI evaluation CPT code.

The submitted documentation indicates that Dr. Van Beest was ordered to address maximum medical improvement, impairment rating, and extent of injury. The narrative report and enclosed forms support that

these examinations were performed, and 2 additional impairment ratings were provided. Therefore, the correct MAR for this service is \$100.00.

28 Texas Administrative Code §134.235, states, in relevant part:

The following shall apply to Return to Work (RTW) and/or Evaluation of Medical Care (EMC) Examinations. When conducting a Division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT Code 99456 with modifier 'RE.' In either instance of whether MMI/IR is performed or not, the reimbursement shall be \$500 in accordance with subsection (i) of this section and shall include Division-required reports.

Further, 28 Texas Administrative Code §134.240(2) states,

When multiple examinations under the same specific Division order are performed concurrently under paragraph (1)(C) - (F) of this subsection:

- (A) the first examination shall be reimbursed at 100 percent of the set fee outlined in §134.235 of this title;
- (B) the second examination shall be reimbursed at 50 percent of the set fee outlined in §134.235 of this title; and
- (C) subsequent examinations shall be reimbursed at 25 percent of the set fee outlined in §134.235 of this title.

The submitted documentation indicates that Dr. Van Beest performed examinations to determine the extent of the compensable injury and the ability of the injured employee to return to work as ordered by the division. Therefore, the correct MAR for these examinations is \$750.00.

The total allowable reimbursement for the services in question is \$1,650.00. This amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,650.00.

### ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$1,650.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Laurie Garnes  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
October 16, 2017  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**